IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2006

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVIRAJA PANDIAN

Civil Revision Petition (PD) No.521 of 2004

and C.M.P.No.5309 of 2004

Kaliathal .... Petitioner/Defendant.

Vs.

1.Murugathal
2. Maheswari
3. Udhaya Raja
4. Udhaya Malar
5. Sangliammal .... Respondents/Plaintiff.

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order dated 25.9.2003 made in I.A.No.1267 of 2003 in O.S.No.234 of 1997 on the file of District Munsif's Court, Dharapuram

For petitioner :Mr.R.Asokan
For Respondent :Mr.D.Kailash Kumar

O R D E R

Aggrieved by the order of the trial Court dated dated 25.9.2003 made in I.A.No.1267 of 2003 in O.S.No.234 of 1997 non-suiting the petitioner for the relief of reopening the case to enable her to file additional written statement claiming the relief of declaration to declare her also as one of the wedded wife of the deceased Bala Dhandapani, the present civil revision petition is filed.

2. The facts giving rise for filing the present revision are as follows:

The respondents herein as plaintiffs filed the suit in O.S.No.234 of 1997 on the file of the District Munsif's Court, Dharapuram for declaration declaring the first respondent as the wife and respondents No.2 to 4 as the children of the deceased Bala Dhandapani. The petitioner herein filed a written statement defendant the suit. By filing the present application in I.A.No.1267 of 2003, the petitioner sought permission of the Court to file an additional written statement for declaring the petitioner also as the legally wedded wife of the deceased Bala Dhandapani by offering to pay necessary court fees.

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3. The said application has been rejected by the trial Court on the premise that the suit has already been listed for trial and evidence on behalf of the plaintiff has been examined and at a belated stage the application of the petitioner cannot be allowed and the same is filed only to protract the proceedings. The correctness of the said order is now put in issue in this revision.

4. Learned counsel appearing for the respondents very strenuously contended that the order of the trial Court cannot be regarded as an illegal. As the trial of the suit has already been commenced, the pleadings cannot be allowed to be amended. Earlier two applications filed by the petitioner for re-opening the case and recalling the witnesses have also been dismissed and thus strenuously contended that the stage of the suit has reached almost finality. In such circumstances, the amendment sought for by way of filing an additional written statement cannot at all be allowed. On that ground, the order of the trial Court needs no interference by this Court.

5. To sustain the said argument, the learned counsel for the respondents relied on a decision of this Court in the case of S.AHMED MEERA VS. S.KUMARASWAMY reported in 2006(1) CTC 55 and that of the Supreme Court in the case of BALDEV SINGH VS. MANOHAR SINGH reported in AIR 2006 SC 2832.

6. I heard the argument of the learned counsel on either side and perused the material on record.

7. The respondents herein filed a suit for declaration to declare the first respondents as wife and respondents 2 to 4 as legal children of the deceased Bala Dhandapani and as such they are the legal representatives of the Deceased Bala Dhandapani who was working in the I.O.C.L. The petitioner herein filed another suit in O.S.No.138 of 1998 for an injunction by impleading the respondents herein along with I.O.C.L. restricting the disbursement of the death-cum-retirement benefits of the deceased Bala Dhandapani, as she was also claiming herself as wife of the deceased Bala Dhandapani, of course, that is an injunction suit only.

8. The trial Court has recorded a statement that earlier two applications filed by the petitioner for reopening and recalling have been rejected. But what is the reason for filing such applications is not available on record. Of course the disposal of those applications cannot be regarded as germane to decide the issue involved in this revision. In this case, a rustic villager, who is solely depending upon the advice of her advocate, has filed the present application seeking to reopen the case to file additional written statement to declare the petitioner also as a legally wedded wife of the deceased Bala Dhandapani by offering to pay necessary court fee to that effect. That aspect of the matter cannot be stated to be against the provisions. When the plaintiffs are seeking the relief very cleverly couched in favour of them, the petitioner/defendant can also seek the relief in her favour by making the amendment in the written statement. that was factually done in this case also.

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9. The decision of the Supreme Court relied on by the learned counsel for the respondents cannot be understood in an abstract fashion. While proceeding with the judgment, in paragraph No.7, a preface of the judgment has been stated with regard to the law on the subject. To put it in the words of the Supreme Court, it reads as follows at paragraph No.8:

> "It is well settled by various decisions of this Court as well as the High Courts in India that Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in Ma Shwe Mya v. Maung Mo Hnaung (AIR 1922 P.C. 249) in which the Privy Council observed:
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> "All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit."

10. The Supreme Court in the said judgment further proceeds that

> "Order 6 Rule 17 of the Code of Civil Procedure consists of two parts. The first part is that the Court may at any stage of the proceedings allow either party to amend his pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. Therefore, in view of the provisions made under Order 6 Rule 17 of the CPC it cannot be doubted that wide power and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleadings if it finds that delay in disposal of Suit can be avoided and that the suit can be disposed of expeditiously.
>
> By the Code of Civil Procedure (Amendment) Act, 2002 a proviso has been added to Order 6 Rule 17 which restricts the Courts from permitting an amendment to be allowed in the pleadings either of the parties, if at the time of filing an application for amendment, the trial has already commenced. However, Court may allow amendment if it is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

11. Learned counsel for the respondents heavily relied on paragraph No.17 of the judgment, wherein the Supreme Court observed that:

> "the proviso to Order 6 Rule 17 of the CPC provides that

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amendment of pleadings shall not be allowed when the trial of the Suit has already commenced. "

What was the stage which can be regarded as commencement of trial has been subsequently dealt with by the Supreme Court. The abstract reading of a particular sentence cannot be appreciated. The finding rendered by the Court in the decision is if the Court is satisfied that the amendment could not be carried out by the parties to the proceedings in spite of due diligence, the proviso provides for granting of the relief, so is the decision of the learned single Judge of this Court reported in 2006(1) CTC 55, with which reliance has been placed by the respondents.

12. As already stated, here is a case in which the petitioner seeks a declaration in her favour by filing an application to reopen her case to file an additional written statement to declare her as one of the legally wedded wife. On the very same ground, she filed a suit for injunction against the I.O.C.L., for injuncting them not to disburse the retirement benefits, which is also based on the same reason. Hence, it is not a new case projected by the petitioner herein.

13. As already stated, the rustic people, who depend upon the advise of the counsel appearing for them, cannot be faulted and that did not take due diligence while filing their earlier written statement. Furthermore the amendment, if allowed, that would avoid multiplicity of proceedings by filing another suit, which also avoid the conflicting judgments rendered by the Court in a suit filed by the respondents for declaration and the suit to be filed by the petitioner seeking same prayer in a subsequent suit. Having regard to the above said facts, this Court is of the considered view that the interest of justice would be met if the petitioner is allowed to raise the pleas by paying necessary fee. The necessary corollary would be the order of the trial Court non-suiting the petitioner on pedantic technicalities has to be set aside and the same is set aside and the revision is allowed. It is needless to say that all the defence the respondents are having legally and factually can be agitated before the trial Court. As the matter is pending nearly for a decade, the parties are directed to get long with the suit and the trial Court is further directed to proceed with the suit on a day to day basis upon passing the order in the application, which is the subject matter of the revision and conclude the same as expeditiously as possible, atleast within a period of four months from the date of receipt of copy of this order.

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With this observation, the civil revision petition is allowed. No costs. Consequently, the connected C.M.P. is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
The District Munsif
Dharapuram

+ 1 CC To Mr.D.Krishnakumar, Advocate SR NO.54340

+ 1 CC To Mr. R.Asokan, Advocate SR NO.54437

C.R.P.(PD)NO.521 of 2004

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